IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 14, 2006

JOHNNY B. EWING v. STATE OF TENNESSEE

Appeal from the Davidson County Criminal Court
No. 2003-A-431 Cheryl Blackburn, Judge

No. M2005-01222-CCA-R3-PC - Filed May 22, 2006

The Petitioner, Johnny B. Ewing, pled guilty to second degree murder and was sentenced to forty years in the Department of Correction. The Petitioner did not appeal his guilty plea or sentence, however, the Petitioner did file a petition for post-conviction relief, which the post-conviction court dismissed after a hearing. The Petitioner now appeals, contending that the post-conviction court erred in finding the Petitioner's guilty plea was entered knowingly and voluntarily and was not the result of ineffective assistance of counsel. Specifically, the Petitioner claims that Counsel: (1) failed to adequately consult with the Petitioner and advise him of the consequences of his plea; (2) failed to adequately inform the Petitioner of the nature of the evidence the State intended to present at trial; and (3) induced the Petitioner into pleading guilty. Finding no reversible error, we affirm the judgment of the post-conviction court.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID G. HAYES and JOHN EVERETT WILLIAMS, JJ., joined.

J. Carlton Drumwright, Brentwood, Tennessee, for the Petitioner, Johnny B. Ewing.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Victor S. (Torry) Johnson III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION
I. Background

This case arises from the Petitioner's filing of a petition for post-conviction relief in the Davidson County Criminal Court. The post-conviction court found the following facts: On December 8, 2003, the Petitioner plead guilty to second degree murder and was sentenced to 40 years in the Tennessee Department of Correction as a violent offender. The Petitioner filed a motion to

withdraw his plea, however, that motion was denied. A petition for post-conviction relief was filed on June 14, 2004, and, subsequently, the post-conviction court appointed counsel.

At the post-conviction hearing, the Petitioner testified that he was originally indicted on charges of first degree murder, but he pled guilty to second degree murder and is currently serving his 40 year sentence in the Department of Correction. He stated that he understood that first degree murder carried a sentence of life in prison, while a conviction for second degree murder for someone with no prior felonies carried a sentence of 15 to 60 years. However, at the post-conviction hearing, the Petitioner testified that he was aware that the actual range for a second degree murder conviction for someone with no prior felonies is 15 to 25 years. The Petitioner has no prior felony convictions. The Petitioner testified that his trial counsel had attempted to explain that the plea agreement the State was offering him was "out of range" but that he did not know that the State could offer him anything less than the 40 years to which he ultimately agreed. He did not recall the trial court explaining that the normal range for a second degree murder conviction with no prior felonies would be 15 to 25 years, however, he admitted that the transcript from his guilty plea hearing contained such an admonishment. Nonetheless, the Petitioner reiterated that he did not fully understand the sentencing range and options available to him.

The Petitioner further testified that he was unaware that the State did not intend to use the statement he gave to the detectives after the commission of the crime. He indicated that, had he known this information, he would have elected to go to trial. He was informed that his statements to the police were "overwhelming proof of premeditation."

Finally, the Petitioner stated that he intended to go to trial on the morning of December 8, 2003, however, shortly before the trial was to begin Counsel informed the Petitioner that the Petitioner's parents did not want him to go to trial and that they wanted to talk to him. He said that his parents told him to listen to his attorney and that because of the statement he had made to the police he should plead guilty. The Petitioner testified that the only reason that he pled guilty was because his mother had asked him to so plead. He stated that, if he had not had that conversation with his parents, he would have proceeded to trial.

On cross-examination, the Petitioner agreed that he understood that if he had been convicted of second degree murder at trial he could have received less than a 40 year sentence, but he reiterated that he believed that he could be sentenced to up to 60 years in prison for second degree murder. He admitted that it was possible that Counsel discussed the parameters of the prison sentence for second degree murder, but he could not recall if Counsel did. The Petitioner also acknowledged that when he entered his guilty plea the trial court had explained that his sentence would only be 15 to 25 years if convicted of second degree murder. He further stated that he was only "somewhat" listening to what the trial court said and admitted that if he did not understand what was going on when he entered his plea that would have been the time to ask the trial court to further explain his options. The Petitioner agreed that the morning of the trial was not the first time Counsel had recommended he plead guilty. He also acknowledged that he could have told Counsel that he did not wish to speak with his parents. The Petitioner agreed that he was capable of making his own decision regarding

whether to go to trial or to accept the plea agreement. Although he stated that he told the trial court that he was satisfied with his representation, he said, "that [was] before I knew that [my trial counsel] had went [sic] and got my m[a]mma and them [sic] instead of my m[a]mma and them [sic] approaching [my trial counsel]." The Petitioner testified that this information was significant because if Counsel had not gone to his parents on the morning of the trial, he would have been in a position to reject the State's 40 year plea agreement. He then said that while he was discussing the plea agreement with his parents Counsel told him that he should take the State's offer because his statement to the police was going to hurt him at trial. The Petitioner stated that, although he was aware of all of the evidence that the State intended to introduce at trial, without his statement to the police he did not believe the State could prove his guilt. He denied hearing the district attorney say that the State did not intend to use his statement during their case-in-chief.

On re-direct examination, the Petitioner said that the meeting with his parents the morning of the scheduled trial was different from previous meetings because his parents were crying, which made him cry and put him under a lot of pressure. He testified that this meeting put him in "a different frame of mind."

Next, the post-conviction court question the Petitioner regarding a hearing that was held just prior to his trial date. The post-conviction court asked the Petitioner if he recalled the State announcing that they were not going to use his statement at trial. The Petitioner indicated that he did not remember the State making any such statement.

The State then called the Petitioner's trial counsel ("Counsel") to testify. Counsel stated that she has been an assistant public defender for 15 years. She said that she explained the sentencing range for second degree murder and thought that the Petitioner understood. Counsel testified that on the morning of the trial she ran into the Petitioner's parents and two sisters in the courthouse, which she said was not unusual because they had spoken several times previously. She said that, while talking with the Petitioner's parents, the Petitioner's parents disclosed that the Petitioner did not know that they wanted him to take the State's plea offer. Counsel testified that she told the Petitioner's parents that it might be important for the Petitioner to know their wishes, and she asked them if they would like to meet with him again to inform him. According to Counsel's testimony, the Petitioner's parents stated that they wanted to meet with the Petitioner to convey their feelings, and Counsel set up a meeting for them. Counsel said that this meeting between the Petitioner and his parents was different than the meetings they had at the Criminal Justice Center because they were able to sit in chairs facing each other, huddled together. She stated that the Petitioner and his parents all cried, but she could not hear the nature of their discussion.

At the conclusion of the Petitioner's meeting with his parents, Counsel informed him that he needed to make a decision regarding the plea offer, so that Counsel could inform the trial court. Counsel stated that it was at this point that the Petitioner decided to accept the plea agreement.

Counsel said that the fact that the State did not intend to use the Petitioner's statement to the police against the Petitioner had no impact on her assessment of the case. She stated that she felt that

a premeditated first degree murder conviction was "very likely" due to the evidence in the case, which included six police officers witnessing the Petitioner shoot the victim in the back. Further, she said that, even though the State did not intend to use the Petitioner's statement, if the Petitioner testified the statement would be used to impeach his testimony. Counsel testified that, although the district attorney mentioned that the State did not intend to use the Petitioner's statement against the Petitioner at trial, this was legal "jargon" that the Petitioner might not have understood. However, she reiterated that the State's decision not to use the Petitioner's statement against the Petitioner at trial did not have any impact on her assessment of the case.

On cross-examination, Counsel testified that she made a motion to suppress the Petitioner's statement to the police because she wanted the Petitioner to be able to testify without being impeached by his statement. She became aware of the State's decision not to use the Petitioner's statements during the State's case-in-chief "[a] couple of weeks before trial." Counsel stated that she could not remember whether she had discussed the State's decision not to use the Petitioner's statement with him because she felt it "didn't seem to solve anything . . . ."

In regards to the Petitioner's conversation with his parents on the morning that he was scheduled to go to trial, Counsel could not recall whether she asked the Petitioner's parents to talk to the Petitioner about accepting the State's plea agreement or if she simply told the Petitioner's parents that they were welcome to do so if they would like. Nonetheless, Counsel stated that she did in fact facilitate the meeting. Based upon this evidence, the post-conviction court dismissed the Petitioner's petition, finding that the Petitioner failed to prove ineffective assistance by clear and convincing evidence, and, subsequently, failing to prove that he suffered any prejudice as a result of the alleged ineffective assistance. It is from that judgment that the Petitioner now appeals.

II. Analysis

On appeal, the Petitioner contends that the post-conviction court erred when it found that the Petitioner's guilty plea was entered knowingly and voluntarily and was not the result of ineffective assistance of counsel. Specifically, the Petitioner claims that Counsel: (1) failed to adequately consult with the Petitioner and advise him of the consequences of his plea; (2) failed to adequately inform the Petitioner of the nature of the evidence the State intended to present at trial; and (3) induced the Petitioner into pleading guilty.

In order to obtain post-conviction relief, a petitioner must show that his or her conviction or sentence is void or voidable because of the abridgment of a constitutional right. Tenn. Code Ann. § 40-30-103 (2003). The petitioner bears the burden of proving factual allegations in the petition for post-conviction relief by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f) (2003). Upon review, this Court will not re-weigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the trial judge, not the appellate courts. Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999); Henley v. State, 960 S.W.2d 572, 578-79 (Tenn. 1997). A post-conviction court's factual findings are subject to a de novo review by this Court;

however, we must accord these factual findings a presumption of correctness, which is overcome only when a preponderance of the evidence is contrary to the post-conviction court's factual findings. Fields v. State, 40 S.W.3d 450, 456 (Tenn. 2001). A post-conviction court's conclusions of law are subject to a purely de novo review by this Court, with no presumption of correctness. Id. at 457. The Tennessee Supreme Court has held that the issue of ineffective assistance of counsel is a mixed question of law and fact and, as such, is subject to de novo review. State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999).

The right of a criminally accused to representation is guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 9, of the Tennessee Constitution. State v. White, 114 S.W.3d 469, 475 (Tenn. 2003); Burns, 6 S.W.3d at 461; Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). This right to representation includes the right to "reasonably effective" assistance. Burns, 6 S.W.3d at 461. The following two-prong test directs a court's evaluation of a claim for ineffectiveness:

> First, the Petitioner must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the Petitioner by the Sixth Amendment. Second, the Petitioner must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the Petitioner of a fair trial, a trial whose result is reliable. Unless a petitioner makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

State v. Melson, 772 S.W.2d 417, 419 (Tenn. 1989). In reviewing a claim of ineffective assistance of counsel, this Court must determine whether the advice given or services rendered by the attorney are within the range of competence demanded of attorneys in criminal cases. Baxter, 523 S.W.2d at 936. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness." House v. State, 44 S.W.3d 508, 515 (Tenn. 2001) (citing Strickland v. Washington, 466 U.S. 688 (1984)). When evaluating an ineffective assistance of counsel claim, the reviewing court should judge the attorney's performance within the context of the case as a whole, taking into account all relevant circumstances. Strickland, 466 U.S. at 690; State v. Mitchell, 753 S.W.2d 148, 149 (Tenn. Crim. App. 1988).

The reviewing court must evaluate the questionable conduct from the attorney's perspective at the time. Strickland, 466 U.S. at 690; Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982). In doing so, the reviewing court must be highly deferential and "should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Burns, 6 S.W.3d at 462. Finally, we note that a defendant in a criminal case is not entitled to perfect representation, only constitutionally adequate representation. Denton v. State, 945 S.W.2d 793, 796 (Tenn. Crim. App. 1996). In other words, "in considering claims of ineffective assistance of counsel, 'we address not what is prudent or appropriate, but only what is constitutionally compelled.'"

Burger v. Kemp, 483 U.S. 776, 794 (1987) (quoting United States v. Cronic, 466 U.S. 648, 665, n.38 (1984)).

Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. Williams v. State, 599 S.W.2d 276, 279-80 (Tenn. Crim. App. 1980). The fact that a particular strategy or tactic failed or hurt the defense does not, standing alone, establish unreasonable representation. House, 44 S.W.3d at 515 (citation omitted); Thomas Brandon Booker v. State, No. W2003- 00961-CCA-R3-PC, 2004 WL 587644, at *4 (Tenn. Crim. App., at Jackson, Mar. 24, 2004), *perm. app. denied* (Tenn. Jun. 21, 2004). However, deference to matters of strategy and tactical choices applies only if the choices are informed ones based upon adequate preparation. House, 44 S.W.3d at 515.

If the petitioner shows that counsel's representation fell below a reasonable standard, then the petitioner must satisfy the prejudice prong of the Strickland test by demonstrating "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694; Nichols v. State, 90 S.W.3d 576, 587 (Tenn. 2002). To satisfy the requirement of prejudice, a petitioner must show a reasonable probability that, but for counsel's unreasonable error, the fact finder would have had reasonable doubt regarding the petitioner's guilt. Strickland, 466 U.S. at 695. This reasonable probability must be "sufficient to undermine confidence in the outcome." Id. at 694; see also Harris v. State, 875 S.W.2d 662, 665 (Tenn. 1994). In addition, when a petitioner claims that the ineffective assistance of counsel resulted in a guilty plea, the petitioner must prove that counsel performed deficiently and that but for counsel's errors, the petitioner would not have pled guilty and would have insisted upon going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

A. Consequences of Guilty Plea

The Petitioner's first assertion is that Counsel failed to adequately consult with the Petitioner and advise him of the consequences of his plea. The State counters that the Petitioner was adequately informed of his constitutional rights and made a knowing and voluntary decision to plead guilty.

When a defendant enters a guilty plea, certain constitutional rights are waived, including the privilege against self-incrimination, the right to confront witnesses, and the right to a trial by jury. Boykin v. Alabama, 395 U.S. 238, 243 (1969). Therefore, in order to comply with constitutional requirements, a guilty plea must be a "voluntary and intelligent choice among the alternative courses of action open to the defendant." North Carolina v. Alford, 400 U.S. 25, 31 (1970). In determining whether a petitioner's guilty plea was knowing and voluntary, this court must look at the totality of the circumstances. State v. Turner, 919 S.W.2d 346, 353 (Tenn. Crim. App. 1995). "This court is bound by the post-conviction court's findings unless the evidence preponderates otherwise." Bates v. State, 973 S.W.2d 615, 631 (Tenn. Crim. App. 1997).

At the post-conviction hearing the Petitioner testified that he was not adequately advised of the consequences of his guilty plea, specifically asserting that he was not aware of the standard sentence range for first and second degree murder for a first time offender. He asserts that he was under the impression that a second degree murder charge for a first time offender carried a sentence of 15 to 60 years. The Petitioner also claims that he believed the State could not offer him anything less than the 40 years they were offering him in exchange for pleading guilty to second degree murder.

At the post-conviction hearing, Counsel testified that she had explained the sentencing range to the Petitioner and that she thought the Petitioner understood. The post-conviction court's order denying post-conviction relief credited Counsel's testimony. Additionally, the Petitioner acknowledged that the trial court explained that the sentence for second degree murder for a first time offender is 15 to 25 years, however he insisted that he was only "somewhat" listening. The interaction between the trial court and the Petitioner at the guilty plea hearing was as follows:

> The Court: [B]ecause it is a 40-year sentence, that tells me you are going to be pleading out of range. If you had gone to trial and been convicted of murder in the second degree, because you don't have any prior felony convictions, your possible punishment would have been 15 to 25 years, but in order to sort of get this, to work out this plea agreement, you've agreed to plead to 40 years, which is what we consider out of range for your prior felony convictions; did you understand that?
>
> [The Petitioner]: Yes, ma'am.
>
> . . . .
>
> The Court: Now [], you were charged with murder in the first degree, which is an intentional premeditated murder, the charge is premeditated and it is an intentional killing of another.
>
> The possible punishment for that is either life with the possibility of parole, life without the possibility of parole, or the death penalty. Those are the three possible punishments.
>
> In your case, the State has not given notice of any enhanced punishment, so that if you had gone to trial and been convicted of murder in the first degree, that would have been an automatic life sentence, but with the possibility of parole; did you understand that?
>
> [The Petitioner]: Yes, ma'am.
>
> The Court: Okay. Also, with the possibility of parole means at least a 51-year sentence; do you understand that also?

[The Petitioner]: Yes, ma'am.

The Court: Okay. Now you are actually going to be pleading guilty to second degree murder, and that is a knowing killing of another, and that possible punishment is 15 to 60 years. Did [your counsel] explain to you what first degree murder is, what the penalty was, as well as what second degree murder was; the difference between them, and the issues about your punishment; did they go over that with you?

[The Petitioner]: Yes, ma'am.

. . . .

The Court: Okay. Now have you thoroughly discussed with [your counsel] everything about your case? I mean, we've had a couple of hearings about this, but I want to make certain that . . . you are prepared to go to trial, but basically everything about the facts, what the State said happened, any defenses that you might have to these charges, or any witnesses that you might have to these charges, or any witnesses that you might call to trial on your behalf; have you gone over all of that with them?

[The Petitioner]: Yes.

Under the totality of the circumstances it is apparent that the Petitioner's decision to plead guilty was a voluntary and intelligent choice among the alternative courses of action open to the Petitioner, and there is nothing in the record to contradict the post-conviction court's finding that Counsel's representation was adequate. Thus, the Petitioner is not entitled to relief on this issue.

B. Knowledge of Evidence to be Presented

The Petitioner next asserts that Counsel failed to adequately inform the Petitioner of the nature of the evidence the State intended to present at trial. The Petitioner alleges that Counsel did not inform him of the State's decision not to use the Petitioner's statements to the police as part of their evidence presentation at trial. It is the Petitioner's contention that, had he known that the State was not planning to use his statements, he would have insisted on going to trial. The State argues that the Petitioner had access to this information, but regardless, it had no effect on the outcome of the Petitioner's case, thus, even if Counsel's assistance was ineffective, the Petitioner suffered no prejudice.

As stated previously, there is a two part test used to determine when an attorney's representation has fallen below that which is required by the United States and Tennessee Constitutions. See Melson, 772 S.W.2d at 419. "First, the Petitioner must show that counsel's performance was deficient. . . . Second, the Petitioner must show that the deficient performance prejudiced the defense." Id. In order to establish prejudice, he or she must then prove that, "but for

counsel's errors, the petitioner would not have pled guilty and would have insisted upon going to trial." Hill, 474 U.S. 52, 59 (1985).

In the case at issue, the Petitioner asserts that he was unaware of the State's intention not to use the Petitioner's statements to the police. He testified that he was told that his statements were "overwhelming proof of premeditation" and that had he known the State did not intend to use his statement he would have preferred going to trial.

Counsel testified that the district attorney mentioned that the State did not intend to use the Petitioner's statement against him at trial, however, Counsel did not recall what the Petitioner understood concerning the use of the statement. Regardless, the State's decision not to use the Petitioner's statement had no impact on Counsel's assessment of the case. Counsel stated that because six police officers had witnessed the crime a conviction for first degree murder was the likely outcome regardless of whether or not the Petitioner's statement was used. Counsel felt that the State not using the Petitioner's statement was of no consequence because if the Petitioner attempted to testify, the State would simply impeach him with the statement.

Additionally, the post-conviction court noted the following:

> The [c]ourt held a suppression hearing on November 24, 2003. Petitioner was present in court during this hearing. At the hearing, the State announced in front of Petitioner that it would not use the [s]tatement[]s in the case-in-chief. This announcement was memorialized in this Court's December 2, 2003 [o]rder, denying [Petitioner's] suppression motion. This [o]rder reads, in relevant part, as follows: "The Court notes that the State announced in open court that it will not use any of [the Petitioner's] statements in its case-in-ch[ie]f, but the Court deems that [the Petitioner's] statements were voluntarily made and, therefore, might be able to be used for impeachment purposes should [the Petitioner] elect to testify at trial." Accordingly, the [c]ourt finds that Petitioner's claim that he was unaware that his statements would only be used for impeachment purposes lacks merit.

The Petitioner was informed of the State's intention not to use his statement on several occasions, and, thus, had ample opportunity to make a "voluntary and intelligent choice" to plead guilty. Although Counsel could not recall if she had specifically discussed the State's decision not to use the Petitioner's statement with the Petitioner, it is clear that the Petitioner had multiple opportunities to learn of the State's intention. The Petitioner was not entitled to perfect representation, merely Constitutionally adequate representation. See Denton, 945 S.W.2d at 796. It cannot be said that Counsel's representation fell below the level mandated by the Constitution. Counsel felt that the State's use of the Petitioner's statement was of minor import, and, consequently did not spend a great deal of time debating the issue or discussing it with the Petitioner. Although there were multiple courses of action available to Counsel, Counsel should not be deemed to have been ineffective merely because a different procedure or strategy might have produced a different result. Williams, 599 S.W.2d at 279-80. As such, it cannot be said the Counsel's performance was

deficient. Additionally, even if the Petitioner's contentions were true, we do not believe that the Petitioner was prejudiced in any way. Six police officers witnessed the crime, and as the post-conviction court pointed out, had the Petitioner chosen to testify the State would have had the opportunity to impeach him with his statements made to the police. The evidence in the record does not preponderate against the post-conviction court's findings, thus, the Petitioner is not entitled to relief on this issue.

C. Inducement to Plead Guilty

The Petitioner's third contention is that Counsel induced the Petitioner into pleading guilty. The Petitioner asserts that on day of his trial he was prepared to proceed to trial but that Counsel, through the use of the Petitioner's parents, convinced the Petitioner to plead guilty. The State argues that the Petitioner's plea was knowing and voluntary and not the result of ineffective assistance of counsel.

As stated above, in order to comply with constitutional requirements, a guilty plea must be a "voluntary and intelligent choice among the alternative courses of action open to the defendant." Alford, 400 U.S. at 31. In determining whether a petitioner's guilty plea was knowing and voluntary, this court must look at the totality of the circumstances. Turner, 919 S.W.2d at 353. "This court is bound by the post-conviction court's findings unless the evidence preponderates otherwise." Bates, 973 S.W.2d at 631.

The post-conviction court found that on the morning of the Petitioner's trial, Counsel happened into the Petitioner's parents and two sisters in the hallway of the courthouse. Counsel and the Petitioner's parents spoke, and the Petitioner's parents told Counsel that they wanted the Petitioner to take the State's plea offer, but they had not told the Petitioner how they felt. Counsel asked the Petitioner's parents if they would like to meet with the Petitioner to share their wishes, and the Petitioner's parents indicated that they would. During the subsequent meeting between the Petitioner and his parents, Counsel was present but did not take part in the conversation. Once the Petitioner's parents left, Counsel informed the Petitioner that he needed to make a decision regarding the State's plea offer. The Petitioner told Counsel that he wished to accept the State's plea offer.

The post-conviction court noted that it found Counsel's testimony to be credible and that Counsel had merely facilitated the discussion between the Petitioner and his parents. The post-conviction court also stated that the Petitioner had not demonstrated coercion by clear and convincing evidence, and pointed out that during the plea colloquy the Petitioner had acknowledged that he had not been threatened or promised anything in order to cause him to plead guilty.

The evidence does not preponderate against the findings of the post-conviction court. There is nothing in the record to indicate that Counsel's setting up the meeting between the Petitioner and his parents was deficient or inadequate representation, and it cannot be argued that the discussion between the Petitioner and his parents prejudiced his case in any way. To the contrary, the meeting between the Petitioner and his parents gave him more time and the benefit of additional perspectives

from which to consider his options. Accordingly, we find that under the totality of the circumstances, the Petitioner's plea was made knowingly and voluntarily. The Petitioner is not entitled to relief on this issue.

III. Conclusion

In accordance with the foregoing, we conclude that the post-conviction court committed no reversible error. Therefore, the judgement of the post-conviction court is affirmed.

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ROBERT W. WEDEMEYER, JUDGE